



US Army Corps
of Engineers

Construction Bulletin

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Subject: Comprehensive Guideline for Procurement of Products
Containing Recovered Materials - EPA Final Rule

Applicability: INFORMATION

1. REFERENCES:

a. Federal Register 1 May 1995, Vol. 60, No. 83, 21370-21384 - Environmental Protection Agency, 40 CFR 247, Comprehensive Guideline for Procurement of Products Containing Recovered Materials, Final Rule.

b. Federal Register 1 May 1995, Vol. 60, No. 83, 21385-21394 - Environmental Protection Agency, Recovered Materials Advisory Notice.

c. Federal Acquisition Circular (FAC) No. 90-27, dated 31 May 1995.

d. Construction Bulletin No. 94-13, dated 14 June 1994 - Executive Order 12873 "Federal Acquisition, Recycling, and Waste Management Prevention."

2. PURPOSE. The purpose of this Construction Bulletin is to alert construction personnel to the Environmental Protection Agency (EPA) final regulation and provide "heads-up" about the new procurement requirements which will eventually find their way into construction contract documents. The effective date of this final regulation is 1 May 1996.

3. DEFINITIONS.

a. Procuring Agency means any Federal agency, or any State agency or agency or political subdivision of a State, which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

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b. Recovered Materials means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

4. BACKGROUND. Section 6002 of the Resource Conservation and Recovery Act (RCRA) and Executive Order 12873 "Federal Acquisition, Recycling, and Waste Prevention," require the EPA to designate procurement items in a Comprehensive Procurement Guideline (CPG) and to provide recommendations in related Recovered Materials Advisory Notices. Procuring Agencies using appropriated federal funds are required, within one year after the EPA designation of an item, to purchase that designated item with the highest percentage of recovered materials practicable (taking into consideration some limitations such as competition, price, availability, and performance). This requirement applies to all procuring agencies and to all procurement actions involving items designated by EPA where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of the item purchased in the previous year was \$10,000 or more. This requirement applies also to the acquisition of supplies or services (including construction) by means of a lease.

5. On 1 May 1995, EPA has promulgated the final procurement guideline that designates 19 new items that are or can be made with recovered materials. These are: engine coolants, structural fiberboard, laminated paperboard, carpet, floor tile, patio blocks, cement and concrete containing ground granulated blast furnace slag, traffic cones, traffic barricades, playground surfaces, running tracks, hydraulic mulch, yard trimmings compost, office recycling containers, office waste receptacles, plastic desktop accessories, toner cartridges, binders, and plastic trash bags. Previously, EPA had issued five guidelines for the procurement of products containing recovered materials. These are for cement and concrete containing fly ash; paper and paper products; re-refined lubricating oils; retread tires; and building insulation.

6. The Recovered Materials Notice referenced in paragraph 1b contains EPA's final recovered materials content level recommendations for purchasing the 19 new items. These recommendations are organized within the following product categories: paper and paper products, vehicular products,

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construction products, transportation products, park and recreation products, landscaping products, and non-paper office products. The effective date of this Notice is 1 May 1996.

7. RCRA section 6002 required Federal agencies that have the responsibility for drafting or reviewing specifications for procurement of items by Federal agencies to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials. RCRA section 6002 requires also that within one year after the publication date of each item designation by the EPA, each procuring agency assure that its specifications for these items require the use of recovered materials to the maximum extent possible and practicable without jeopardizing the intended end use of these items. EPA has developed lists of manufacturers and vendors of the designated items. These lists are updated periodically as new sources are identified and EPA becomes aware of changes in product availability. To assist procuring agencies, the lists are made available at no charge by calling EPA's RCRA Hotline at (800) 424-9346.

8. In 31 May 1995, Federal Acquisition Circular (FAC) No. 90-27 was issued amending the Federal Acquisition Regulations (FAR) to reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. The effective date for the implementation of the new clauses is 31 May 1995. The major changes are the following:

a. A new section at 23.404(b) requiring that acquisitions of certain items meet the EPA minimum standards for recovered material content, unless approval is granted by an official designated by the agency head;

b. A new provision and clause at 52.223-8 and 52.223-9 requiring offerers and contractors to provide information regarding the percentage of recovered materials in certain items proposed for use and actually used in contract performance;

c. A new clause at 52.223-10 requiring contractors operating Government-owned or -leased facilities to establish cost-effective waste reduction programs;

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d. A new clause at 52.204-4 to encourage contractors to maximize the use of double-sided copying on recycled paper when submitting written documents related to an acquisition.

9. HQUSACE is presently developing changes to the CEGS which will implement Executive Order 12873, and require that Green Building or "environmentally preferable" designs, concepts, products, materials and/or services be incorporated into construction projects to the maximum extent practicable. The revised guidance will consider raw materials, acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, and disposal of products, materials or services. Green Building is defined as the careful design, construction, operation, maintenance, and/or reuse/removal of a constructed facility in an environmentally and energy efficient manner.

10. This Construction Bulletin has been coordinated with the following HQUSACE organizations: Engineering Division (CEMP-E); Environmental Restoration Division (CEMP-RT); Office of the Chief Counsel (CECC-C); Office of the Principal Assistant Responsible for Contracting (CEPR-P); and Operations, Construction, and Readiness Division (CECW-O).



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